

## **REMARKS**

Claims 1-39 are pending in this application. By this Amendment, claims 1, 5, 6, 8-11, 14, 19, 20, 31-34 and 36-39 are amended, and claims 3, 4, 15, 16 and 18 are canceled. No new matter is contained in the amendments. Accordingly, claims 1, 2, 5-14, 17, 19-39 are currently pending in the present application and are submitted for reconsideration.

### **Claims 36-39 Objected**

Claims 36-39 were objected as containing some minor informalities therein. The applicants respectfully submit that claims 36-39 have been amended to obviate the objections, and therefore claims 36-39 are in compliance with US patent practice.

### **Claims 1-18 and 32-37 Rejected Under 35 U.S.C. § 112, 2<sup>nd</sup> Paragraph**

Claims 1-18 and 32-37 were rejected as failing to comply with the enablement requirement. Specifically, the Office Action took the position that "the claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The applicants respectfully disagree and highlight Figures 11-13 of the drawings as well as the accompanying detailed disclosure on pages 26-30 of the present application. In particular, it is submitted that each of Figures 11-13 illustrates algorithmic flow charts with steps of present invention. For instance, step 122 denotes identifying the encounter details where,

the final output of the SQL procedure contains all of the IEP services that were supposed to be provided within the date range, school or region, Interval, and provider given. It will

then compare it with the actual encounters that happened. The report will give the percentage of under or over serviced children. It will break up the services into the following categories: Required, Met, Attempted, Missed, Made Up, and Missing.

Furthermore, the applicants once again submit that the specification states,

in part:

Yet another unique feature of the SETS system that is of importance to the present invention is customizable scheduling, which allows the calendar to vary, for example, by building or other location. A critical component of many school districts or other entities is variation in schedule by building (e.g., school year versus calendar year, depending on building). Because of this feature of the SETS system, a theoretical calculation can be made of the level of services that should be provided to each child by each provider, based, for example, on the amount of time that the child is scheduled to be in each building and the amount of services the child is scheduled to receive under that child's IEP. For example, if a child is to receive a certain type of therapy twice a week, and the child is determined to be located in a particular building and having a particular service provider for that therapy, over a four week period the child should theoretically receive eight units of the therapy by the identified service provider in that building.

An embodiment of the present invention allows the service provider to periodically (e.g., monthly) run a service gap analysis report based on the SETS or Encore system information and the encounter tracking feature information. The report can include both negative gaps, showing shortfalls, and positive gaps, showing services greater than the expected number, along with combined totals over longer or combined periods (e.g., a short week or month may indicate a partial service is to be provided, which may occur during that time period or in the subsequent time period, producing either a positive over service or a negative gap, respectively, for that time period, which collectively balance out). In an embodiment of the present invention, information from each month or other selected time period is analyzed to determine any gap in the amount of services delivered during that month. These services are defined as the combined number of actual delivered services and services that were attempted to be delivered. In addition, surpluses and deficits from succeeding periods are added together

to provide an overall deficit or surplus that a provider for a child has for a given period of time.

In view of at least the foregoing, Applicants respectfully submit that the specification describes the claimed "calculations" in manner which would allow those of ordinary skill in the art to make and use the claimed invention. Therefore, Applicants respectfully request that the Examiner withdraw the enablement requirements of claims 1-18 and 32-35.

**Claims 1-18 and 32-35 Rejected Under 35 U.S.C. § 101**

The Examiner rejected claims 1-18 and 32-35 under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. Specifically, the Examiner asserts that Applicants' previous amendments to the claims "are not enough to distinguish that the steps are being performed by a computer processor." Applicants have amended claims 1, 5-6, 8-11, 14, and 32-34 to clarify that various steps of the claimed method are performed by a computer processor. Applicants respectfully submit that claims 1-18 and 32-35, at least as amended, are directed towards statutory subject matter. Therefore, Applicants respectfully request that the Examiner withdraw the non-statutory subject matter rejection of claims 1-18 and 32-35.

**Claims 1-39 Rejected Under 35 U.S.C. § 103(a)**

Claims 1-39 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over 4GL in view of Roper (U.S. Patent No. 6,270,351). The applicants respectfully traverse the rejection.

Claim 1 recites a method for service gap analysis comprising, among other features, the steps of at the computer processor, comparing the expected number of

services with the number of identified encounters for the service plan; and at the computer processor, generating information indicating required services, missed services, missing services, and services met, attempted and made-up.

Claims 14 recites a method for enabling encounter information into a storage system comprising, among other features, at the computer processor, comparing an expected number of services with the service encounter actually performed; and at the computer processor, generating information indicating required services, missed services, missing services, and services met, attempted and made-up.

Claim 19 recites a system for assisting a management entity with compliance with a management scheme comprising, among other features, means for comparing the expected number of services with the number of identified encounters for the service plan; and means for generating information indicating required services, missed services, missing services, and services met, attempted and made-up.

Claim 20 recites a system for assisting a management entity with compliance with a service plan comprising, among other features, wherein the expected number of services are compared with the number of identified encounters for the service plan; and wherein information indicating required services, missed services, missing services, and services met, attempted and made-up are generated.

Claim 31 recites a computer program product comprising, among other features, fourth computer readable program code means for comparing the expected number of services with the number of identified encounters for the service plan; and fifth computer

readable program code means for generating information indicating required services, missed services, missing services, and services met, attempted and made-up.

The applicants submit that 4GL in view of Roper fails to disclose or suggest each and every element recited in claims 1, 14, 19, 20 and 31 of the present application. In particular, it is submitted that 4GL in view of Roper fails to disclose at least the above highlighted limitations. For example, neither 4GL nor Roper, taken alone or in combination, disclose the “steps of at the computer processor, comparing the expected number of services with the number of identified encounters for the service plan; and at the computer processor, generating information indicating required services, missed services, missing services, and services met, attempted and made-up.”

Therefore, the applicants submit that 4GL in view of Roper fail to disclose each and every element recited in claims 1, 14, 19, 20 and 31 of the present application.

To establish *prima facie* obviousness, each feature of a rejected claim must be taught or suggested by the applied art of record. See M.P.E.P. §2143.03 and In re Royka, 490 F.2d 981 (CCPA 1974). As explained above, 4GL in view of Roper, taken alone or in combination, do not teach or suggest each feature recited by claims 1, 14, 19, 20 and 31. Accordingly, for the above provided reasons, Applicants respectfully submit that claims 1, 14, 19, 20 and 31 are not rendered obvious under 35 U.S.C. § 103 by the teachings of 4GL in view Roper. Therefore, it is respectfully submitted that claims 1, 14, 19, 20 and 31 should be deemed allowable.

As claims 2, 5-13 and 32-35 depend from claim 1, claim 17 depends from claim 14, claims 36-39 depend from claim 19, and claims 21-30 depend from claim 20,

Applicants submit that each of these claims incorporates the patentable aspects therein, and are therefore allowable for at least the reasons set forth above with respect to the independent claims, as well as for the additional subject matter recited therein.

Furthermore, the applicants submit that Under U.S. patent practice, the PTO has the burden under §103 to establish a *prima facie* case of obviousness. In re Fine, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Both the case law of the Federal Circuit and the PTO itself have made clear that where a modification must be made to the prior art to reject or invalidate a claim under §103, there must be a showing of proper motivation to do so. The mere fact that a prior art reference could arguably be modified to meet the claim is insufficient to establish obviousness. The PTO can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. Id. In order to establish obviousness, there must be a suggestion or motivation in the reference to do so. See also In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984) (prior art could not be turned upside down without motivation to do so); In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1998); In re Dembiczak, 175 F.3d 994 (Fed. Cir. 1999); In re Lee, 277 F.3d 1338 (Fed. Cir. 2002). The Office Action restates the advantages of the present invention to justify the combination of references. There is, however, nothing in the applied references to evidence the desirability of these advantages in the disclosed structure.

The applicants respectfully request withdrawal of the rejection.

### **Conclusion**

The applicants respectfully submit that the above-captioned patent application is in condition for allowance, and such action is earnestly solicited. If the Examiner believes that an in-person or telephonic interview with Applicants' representatives would expedite the prosecution of the above-captioned patent application, the Examiner is invited to contact the undersigned attorney of records. Applicants believe that no fees are due as a result of this submission. Nevertheless, in the event of any variance between the fees determined by Applicants and those determined by the U.S. Patent and Trademark Office, please charge any such variance to the undersigned's Deposit Account No. 01-2300 referencing to attorney docket number 026063-00018.

Respectfully submitted,



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Enclosure: Petition for Extension of Time (two months)